

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

)	
THOMAS E. PEREZ, Secretary of the)	
United States Department of Labor, ¹)	
)	
Plaintiff,)	Civil Action No. 12-4910
)	(Judge Mary A. McLaughlin)
v.)	
)	<u>CONSENT ORDER</u>
DIETRICH & ASSOCIATES, INC.)	
and KURT E. DIETRICH,)	
)	
Defendants.)	
)	

FILED
JUL 24 2013
MICHAEL E. KONZ, Clerk
U.S. District Court
Eastern District of Pennsylvania

Plaintiff Thomas E. Perez, Secretary of the United States Department of Labor (the "Secretary"), and Defendants Dietrich & Associates, Inc. and Kurt E. Dietrich, have agreed to a settlement of all civil claims and issues between them in this action, and all parties consent to the entry of this Consent Order by the Court.

1. This action was originally filed by former Secretary of Labor Hilda L. Solis pursuant to her authority under Title I of the Employee Retirement Income Security Act of 1972 ("ERISA"), 29 U.S.C. § 1001, et seq. After her resignation, Seth D. Harris was named acting Secretary of Labor and pursuant to Fed. R. Civ. P. 25(d) was substituted as Plaintiff in this matter. The caption has been amended again pursuant to Fed. R. Civ. P. 25(d) to reflect the appointment of Secretary Perez. The Complaint alleges that Defendants breached their duties of prudence and loyalty and engaged in prohibited transactions in violation of Sections 404 and 406 of ERISA, 29 U.S.C. §§ 1104 and 1106, in connection with fees received by Defendants as part of their facilitation of the purchase of a group annuity for a pension plan sponsored by Memorial Hospital – West Volusia, Inc. ("Pension Plan").

¹ This substitution is made pursuant to Fed. R. Civ. P. 25(d) following the appointment of Thomas E. Perez as Secretary of Labor.

2. Defendants acknowledge service of the complaint and admit that this Court has jurisdiction over the parties and the subject matter of this action.

3. The parties waive Findings of Fact and Conclusions of Law and consent to the entry of this Consent Order ("Order") as a full and complete resolution of all of the civil claims and issues arising between them in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

4. Defendants neither admit nor deny any wrongdoing or liability with respect to the allegations of the Complaint.

5. Defendants expressly acknowledge and represent that they have read this Consent Order and understand its provisions. Any undersigned attorney expressly acknowledges and represents that he or she is authorized and empowered to execute this Consent Order on behalf of the party represented. If an attorney or other agent has executed this Consent Order on behalf of any Defendant, a written acknowledgement that such attorney or agent is authorized to execute this Consent Order shall be executed by each such Defendant and attached hereto as an Exhibit.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

I. JURISDICTION

The Court has jurisdiction over the parties to this Consent Order and the subject matter of this action and is empowered to provide the relief herein.

II. COMPLIANCE

1. Within thirty (30) days of the date of this Consent Order, the Defendants jointly and severally shall pay to an Independent Fiduciary, to be selected by the Secretary, \$272,727 (the "Settlement Amount") for distribution to the individuals and their heirs or assigns covered by the Hartford Life Group Annuity (contract no. GA-20204), in proportion to the original cost

per annuitant paid by the West Volusia Pension Plan. If, in the case of a deceased annuitant, after reasonable and diligent effort the Independent Fiduciary is unable to locate an estate representative of the deceased annuitant, that annuitant's share will be distributed proportionately to the remaining individuals and their heirs or assigns covered by the Group Annuity. Payment by Defendants shall be made in the form of cash, cashier's check or certified check. The Independent Fiduciary shall be paid out of the Settlement Amount.

2. Within thirty (30) days of the date of this Consent Order, Defendants jointly and severally will pay the penalty amount of \$27,273 pursuant to Section 502(l) of ERISA, 29 U.S.C. § 1132(l). Defendants each waive notice of assessment and service requirement of 29 C.F.R. § 2570.83. Payment shall be made in the form of cashier's check or certified check and delivered to the United States Department of Labor by:

Regular mail to:

ERISA - Civil Penalties
P.O. Box 71360
Philadelphia, PA 19176-1360

By overnight delivery to:

ERISA Civil Penalties
Lockbox No. 8011
500 White Clay Center
Newark DE 19711

The check will be made payable to the United States Department of Labor and will reference EBSA Case No. 20-010171(48). This penalty payment is not tax-deductible.

3. Within forty-five (45) days after the date of this Consent Order, Defendants will provide to the Secretary proof of payment of the Settlement Amount. Such proof may include copies of checks or other documents evidencing the payment made. Any such proof under this paragraph will be sent to the Secretary's representatives at the following addresses:

Marc Machiz
Regional Director
Employee Benefits Security Administration
United States Department of La
Suite 870 West
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106-3317
machiz.marc@dol.gov

and

Stacey E. Elias
Trial Attorney
United States Department of Labor
Office of the Solicitor
Plan Benefits Security Division
P.O. Box 1914
Washington, D.C. 20013
elias.stacey@dol.gov

4. Defendants agree not to provide services to any ERISA Plan without entering into a written agreement, contract or letter of understanding (regardless of form, hereafter referred to as "contract") with that ERISA Plan, specifying the services that are included in the contract. Before any such contract is entered into, extended or renewed, Defendants agree to disclose in writing all of the information required by Section 408(b)(2) of ERISA, 29 U.S.C. § 1108(b)(2) and 29 C.F.R. § 2550.408(b)(2)(c). All such contracts shall include a provision that ERISA

Plans are entitled to certain disclosures and shall cite to Section 408(b)(2) of ERISA, 29 U.S.C. § 1108(b)(2)(c).

5. All contracts with ERISA Plans shall contain a provision stating that the person executing the contract on behalf of the ERISA plan has read the contract in its entirety and understands its provisions.

6. As to any current or future entity (in addition to Dietrich & Associates) that Kurt E. Dietrich may control (whether directly or indirectly) and that may provide goods or services to

an ERISA-covered plan, Kurt E. Dietrich will cause that entity to comply with paragraphs II.4. and II.5. of this Consent Order.

7. Defendants will not, directly or indirectly, individually or through any entity or any other person, violate or participate in any violation of ERISA.

III. RELEASE

1. This Consent Order constitutes a full, final and complete judicial resolution of all of the civil claims alleged in the Secretary's Complaint or that arise out of the occurrences alleged therein against Defendants in this action; and all such claims against the defendants and their agents, employees, representatives, heirs and assigns are hereby released, settled, discharged and dismissed with prejudice. Neither the Secretary nor the Defendants waives any claims against any other persons.

2. The Defendants and their agents, beneficiaries, representatives, assigns and successors in interest, do hereby release the Secretary and his officers, agents, attorneys, employees and representatives, both in their individual and Government capacities, from all actions, claims and demands of whatsoever nature, whether known or unknown, including those arising under any statute, rule or regulation, that relate in any manner to the Secretary's investigation or any other proceeding or investigation incident thereto. In particular, Defendants expressly waive any and all claims of any nature that they may have against the Secretary or any of his officers, agents, employees or representatives arising under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412.

IV. PARTIES BOUND

This Consent Order is not binding on any other governmental agency other than the United States Department of Labor.

V. MULTIPLE ORIGINALS

This Consent Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together shall constitute one and the same instrument.

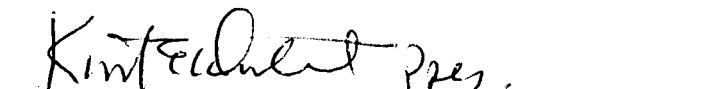
FOR PLAINTIFF ~~ACTING~~ SECRETARY OF LABOR ~~SETH D. HARRIS~~: (SEE FN 1)



STACEY E. ELIAS

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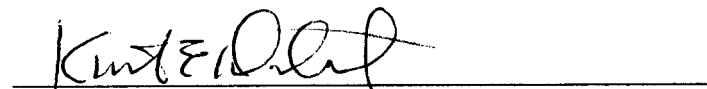
FOR DEFENDANT DIETRICH & ASSOCIATES, INC.:



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Plymouth Meeting, PA 19462
(610) 279-9455
Fax: (610) 277-6571

FOR DEFENDANT KURT E. DIETRICH



KURT E. DIETRICH

SO ORDERED and ENTERED:

Date: July 25, 2013

Mary A. McLaughlin
UNITED STATES DISTRICT JUDGE